

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	
	§	Case No. 23-90295 (DRJ)
ATHENEX, INC., <i>et al.</i> , ¹	§	
	§	
Debtors.	§	Chapter 11
	§	

**AVIR PHARMA INC.’S LIMITED OBJECTION TO NOTICE OF EXECUTORY
CONTRACTS AND UNEXPIRED LEASES WHICH MAY BE ASSUMED AND
ASSIGNED, PURSUANT TO SECTION 365 OF THE BANKRUPTCY CODE, IN
CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS’
ASSETS AND THE PROPOSED CURE AMOUNTS WITH RESPECT THERETO
[Relates to Dkt. No. 141]**

Avir Pharma, Inc. (“Avir”) files this limited objection (the “Objection”) and reservation of rights to the *Notice of Executory Contracts and Unexpired Leases Which May be Assumed and Assigned, Pursuant to Section 365 of the Bankruptcy Code, in Connection with the Sale of Substantially All of the Debtors’ Assets and the Proposed Cure Amounts with Respect Thereto* [Dkt. No. 141] (the “Assumption Notice”) with respect to the License Agreement between Avir and Debtor Athenex, Inc. (“Athenex”) listed on Exhibit A to the Assumption Notice. In support of the Objection, Avir respectfully states as follows:

1. Prior to the Debtors’ bankruptcy filing, on July 23, 2021, Avir and Athenex entered into that certain License Agreement (the “License Agreement”) and that certain Supply Agreement (the “Supply Agreement,” and together with the License Agreement, the “License and Supply Agreement”), which govern the terms of the relationship and business dealings between Avir and Athenex. The Supply Agreement expressly provides that “the Parties confirm that this Supply

¹ A complete list of each of the Debtors in these Chapter 11 Cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://dm.epiq11.com/athenex>. The location of Athenex, Inc.’s principal place of business and the Debtors’ service address in these Chapter 11 Cases is 1001 Main Street, Suite 600, Buffalo, NY 14203.

Agreement forms an integral part of the License Agreement, and therefore, the terms of the License Agreement . . . apply to this Supply Agreement as if recited at length.” *See* Supply Agreement ¶ 2. The Supply Agreement also states that it “forms part of the License Agreement” and, “along with all exhibits, schedules, and other amendments to th[e Supply] Agreement and to the License Agreement, together constitute the entire agreement between the Parties regarding the subject matter of this Agreement.” *See* Supply Agreement ¶ 9.2. Likewise, the License Agreement references the Supply Agreement, detailing that Athenex’s supply obligations under the License Agreement are governed by the Supply Agreement, which is attached to the License Agreement as Exhibit B. *See* License Agreement § 4.1.

2. Under the License and Supply Agreement, Athenex granted to Avir an exclusive license to commercialize certain “Licensed Products” in Canada which contain the tribanibulin compound (the “Compound”) as its sole active pharmaceutical ingredient (“API”) or in combination with an additional API, for topical administration for use in the treatment or prevention of any skin disorder or skin disease in humans, including any skin cancer treated by dermatologists, as described further in the License and Supply Agreement. In addition to granting the license, the License and Supply Agreement requires Athenex to supply the Licensed Products to Avir and sets forth payment terms governing the payment of fees, including an upfront fee, milestone fees, royalties, and other fees payable from Avir to Athenex.

3. As of the date of this Objection, Avir has performed and satisfied all of its outstanding obligations, conditions, and requirements under the License and Supply Agreement. While Athenex also has fulfilled its current obligations under the License and Supply Agreement and is not currently in breach of any of its obligations, Avir nonetheless files this limited Objection and reservation of rights to (1) clarify the intricate and inseparable nature of the License

Agreement and the Supply Agreement, which requires both agreements to be assumed and assigned as one agreement; and (2) to reserve Avir's rights with respect to any future identified assignee, including specifically its rights to amend or supplement this Objection as to any future assignment of the License and Supply Agreement and to demand the identity of the assignee, the receipt of adequate assurance from the assignee, and the satisfaction of all other requirements set forth in the Bankruptcy Code, including section 365.

4. Avir reserves the right to amend or supplement this Objection to include, without limitation, any cure amounts that become known to Avir prior to the assumption or assignment of the agreements and to raise any additional objections to the assumption or assignment of the agreements, including, without limitation, relating to the identity of the assignee and its ability or inability to provide adequate assurance of future performance.

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Dated: June 7, 2023
Houston, Texas

Respectfully submitted,

NORTON ROSE FULBRIGHT US LLP

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CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2023, a true and correct copy of the foregoing document was filed and served via the Court's electronic case filing and noticing system to all parties registered to receive electronic notices in this matter.

/s/ Julie Harrison

Julie Harrison